

**REMARKS**

This responds to the Final Office Action, dated September 14, 2005, and the Advisory Action, dated January 18, 2006. Claims 114, 117 to 136, and 139 to 144 were acted on by the Examiner. Claims 114, 126, 135, 139, 140, 142, and 143 have been amended. Claims 1 to 113, 115, 116, 137, and 138 have been canceled without prejudice. No claims have been added. Accordingly, claims 114, 117 to 136, and 139 to 144 are presented for examination.

**Summary of the Examiner's Action**

**Objections to the Specification**

The specification has been objected to for lacking priority information.

**Claim Rejections**

Claims 114, 117 to 136, and 139 to 144 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Claims 114, 117 to 136, and 139 to 144 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement.

Claim 135 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite.

Applicant respectfully traverses the Examiner's rejections.

**Discussion**

**Amendments to the Specification**

The specification has been amended to recite priority information. Accordingly, applicant respectfully requests that the objection to the specification be withdrawn.

**Amendments to the Claims**

Applicant amended claims 114 and 126 to include functional language. Support for these amendments is found in originally filed claim 1 of the application.

Claim 135 has been amended to depend from claim 134 and to recite proper antecedent basis.

Claims 139, 140, 142, and 143 have been amended to correct spelling and grammar.

Discussion of the Section 112 Rejections

## (A) Section 112, first paragraph, (written description)

Claims 114, 117 to 136, and 139 to 144 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner has rejected claims 114, and 117 to 138 for not defining the functional properties of the claimed peptide.

Independent claims 114 and 126, from which all of the other pending claims depend (directly or indirectly), have been amended to be directed to peptides which bind to “a gastro-intestinal tract transport receptor selected from the group consisting of HPT1 (human intestinal oligopeptide transporter), hPEPT1 (human oligopeptide transporter), D2H (human D2 clone), and hSI (human sucrase isomaltose)”. As a consequence of this amendment, applicant submits that this functional language further defines the present invention.

In addition, claim 26 has been amended to delete the recitation “or a binding portion thereof”.

Accordingly, applicant respectfully requests that the rejection of claims 114, 117 to 136, and 139 to 144 under 35 U.S.C. §112, first paragraph (written description), be withdrawn.

## (B) Section 112, first paragraph (enablement)

Claims 114, 117 to 136, and 139 to 144 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. In particular, the Examiner has asserted that specification is not enabling for fragments of the claimed peptides.

Applicant respectfully submits that the presently amended claims are directed to peptides comprising a sequence selected from the group consisting of ZElan144 (SEQ ID NO:1), ZElan 145 (SEQ ID NO:2), and ZElan 146 (SEQ ID NO:3), and not fragments of these peptides.

Also, as noted above, independent claims 114 and 126, from which all of the other pending claims depend (directly or indirectly), have been amended to be directed to peptides which bind to “a gastro-intestinal tract transport receptor selected from the group consisting of HPT1 (human intestinal oligopeptide transporter), hPEPT1 (human oligopeptide transporter), D2H (human D2 clone), and hSI (human sucrase isomaltose)”. As a

consequence of this amendment, applicant submits that this functional language further defines the present invention and provides guidance for the skilled artisan to practice the invention with a defined course of experimentation eliminating the need for potentially undue experimentation (see, for example, page 19, line 5, to page 21, line 11 of the application).

In addition, the Examiner has asserted that the specification is not enabled for compositions for treatment of the recited diseases and disorders. In the previous reply, claims 121 and 126 have been amended to recite the specific disease states of hypertension, diabetes, osteoporosis, hemophilia, anemia, cancer, migraine, and angina pectoris. Thus, the diseases to be treated are found within the claims and, as noted above, the active agents are readily identifiable from the specification. The Examiner has asserted that there is no indicia as to how to ascribe value to the active agent. Applicant respectfully suggests that the term "value" should be given its usually meaning, thus, an agent having value in the treatment of a disease or disorder is an agent that improves certain factors of a diseased patient's condition. Examples of such factors include the patient's prognosis and comfort. Measurement of such factors is routine and well-known by those who work with patients having the enumerated diseases/disorders. For example, a patient with diabetes would have their insulin and glucose levels monitored to determine if an agent had value in their treatment.

Accordingly, applicant respectfully requests that the rejection of claims 114, 117 to 136, and 139 to 144 under 35 U.S.C. §112, first paragraph (enablement), be withdrawn.

(C) Section 112, second paragraph

Claim 135 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite. In response, claim 135 has been amended to depend from claim 134. In addition, claim 135 has been amended to recite proper antecedent basis.

Accordingly, applicant respectfully requests that the rejection of claims 135 under 35 U.S.C. §112, second paragraph, be withdrawn.


SYNNESTVEDT & LECHNER LLP

In re Application of Daniel O'Mahony  
Application No. 09/443,986

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Applicant submits that the claims as amended define allowable subject matter, and a prompt and favorable action is solicited respectfully.

Respectfully submitted,

  
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